

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

FILED

04 JAN 26 PM 4:14

**U.S. DISTRICT COURT
N.D. OF ALABAMA**

sjr

UNITED STATES OF AMERICA,

v.

**RICHARD M. SCRUSHY,
Defendant.**

CR-03-BE-0530-S

Motion to Modify Discovery Order

Comes now the United States, by and through the United States Attorney for the Northern District of Alabama, and moves the court to modify paragraph (2)(e) of the Order entered December 30, 2003, to direct that statements of expert witnesses called by the United States not be produced until after such witnesses have testified on direct examination. This motion is made for the following reasons:

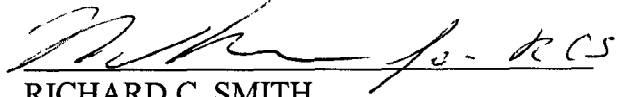
1. The *Jencks Act*, Title 18, United States Code, Section 3500 prohibits production of witness statements until after the witness has testified.
2. The Court may order pretrial production only with consent of the parties. The parties in this case have given their consent.
3. The defendant has not requested production of expert witness reports under Rule 16(a)(1)(G) *Federal Rules of Criminal Procedure*. He may have reasonably done so to avoid the reciprocal discovery requirements of Rule 16.
4. By doing so, however, the defendant may unfairly obtain such reports in the form of *Jencks Act* material. This is because the defendant could instruct his experts to not make a written report discoverable under Rule 26.2, or he could instruct them to write a minimally informative report, thus gaining an unfair advantage.

Respectfully submitted, this the 26th day of January, 2004.

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United States Attorney, by



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Certificate of Service

The United States certifies that a copy of the aforesaid has been served by mailing the same by First Class United States Mail, this date, to the defendant's attorneys of record:

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